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WILLIAM BERRY

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WILLIAM BERRY,

Plaintiff,

v.

NATIONAL CONSUMER TELECOM
& UTILITIES EXCHANGE, INC;
COX COMMUNICATIONS,

Defendants.

Civil Action No.:

**COMPLAINT FOR DAMAGES
PURSUANT TO THE FAIR
CREDIT REPORTING ACT, 15
U.S.C. § 1681, ET SEQ.**

JURY TRIAL DEMANDED

INTRODUCTION

1. The United States Congress has found the banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence, which is essential to the continued

1 functioning of the banking system. Congress enacted the Fair Credit
2 Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”), to ensure fair and accurate
3 reporting, promote efficiency in the banking system, and protect consumer
4 privacy. The FCRA seeks to ensure consumer reporting agencies exercise
5 their grave responsibilities with fairness, impartiality, and a respect for the
6 consumer’s right to privacy because consumer reporting agencies have
7 assumed such a vital role in assembling and evaluating consumer credit and
8 other information on consumers. The FCRA also imposes duties on the
9 sources that provide credit information to credit reporting agencies, called
10 “furnishers.”
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- 15 2. Through a tightly wound set of procedural protections, the FCRA protects
- 16 consumers from the material risk of harms that otherwise flow from inaccurate
- 17 reporting. Thus, through the FCRA, Congress struck a balance between the
- 18 credit industry’s desire to base credit decisions on accurate information, and
- 19 consumers’ substantive right to protection from damage to reputation, shame,
- 20 mortification, and the emotional distress that naturally follows from
- 21 inaccurate reporting of a consumer’s fidelity to his or her financial
- 22 obligations.
- 23
- 24
- 25
- 26 3. WILLIAM BERRY (“Plaintiff”), by Plaintiff’s attorneys, brings this action
- 27 against COX COMMUNICATIONS (“COX”) and NATIONAL
- 28

1 CONSUMER TELECOM & UTILITIES EXCHANGE, INC (“NCTUE”)
2 (jointly, “Defendants”) for violations of the FCRA, as set forth below.

3 **JURISDICTION AND VENUE**

- 4 4. This Court has federal question jurisdiction because this case arises out of
5 violations of the FCRA. 15 U.S.C. § 1681 *et seq.*; 28 U.S.C. § 1331; *Smith v.*
6 *Community Lending, Inc.*, 773 F.Supp.2d 941, 946 (D. Nev. 2011).
7
8 5. Venue is proper in the United States District Court for the District of Nevada
9 pursuant to 28 U.S.C. § 1391(b) because Plaintiff is a resident of Clark
10 County, Nevada and because Defendants are subject to personal jurisdiction
11 in Clark County, Nevada; conduct business in Clark County, Nevada; and the
12 events giving rise to this action occurred in Clark County, Nevada.
13
14
15

16 **PARTIES**

- 17 6. Plaintiff is a natural person residing in the County of Clark, State of Nevada. In
18 addition, Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §
19 1681a(c).
20
21 7. Cox is a corporation doing business in the State of Nevada.
22
23 8. Cox is a furnisher of information as contemplated by 15 U.S.C. § 1681s-2(b)
24 that regularly and in the ordinary course of business furnishes information to
25 a consumer credit reporting agency.
26
27 9. NCTUE regularly assembles and/or evaluates consumer credit information for
28 the purpose of furnishing consumer credit reports to third parties, and uses

1 interstate commerce to prepare and/or furnish the reports. Equifax is a
2 “consumer reporting agency” as that term is defined by 15 U.S.C. § 1681a(f),
3 doing business with its principal place of business in Georgia.
4

- 5 10. Unless otherwise indicated, the use of Defendants’ names in this Complaint
6 includes all agents, employees, officers, members, directors, heirs, successors,
7 assigns, principals, trustees, sureties, subrogees, representatives, and insurers
8 of Defendants.
9

10 **NCTUE Failed to Respond to Plaintiff’s Written Dispute**
11

- 12 11. In an NCTUE credit report dated July 24, 2020, NCTUE reported inaccurate
13 information for multiple accounts, including an account Plaintiff held with
14 DirecTV.
15
- 16 12. On or about August 17, 2020, pursuant to 15 U.S.C. § 1681i(a)(2), Plaintiff
17 disputed NCTUE’s reported information regarding misreported trade lines by
18 notifying NCTUE, in writing, of the incorrect and inaccurate credit
19 information furnished by NCTUE.
20
- 21 13. Specifically, Plaintiff mailed a written dispute, certified, return receipt, to
22 NCTUE (“Dispute Letter”), requesting disputed inaccurate and incorrect
23 derogatory information be removed, corrected, or deleted.
24
- 25 14. NCTUE was required to conduct an investigation into the disputed accounts
26 pursuant to 15 U.S.C. § 1681i.
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1 15. NCTUE thereafter failed to comply with its obligation to provide Plaintiff
2 with the results of any “reinvestigation” completed pursuant to 15 U.S.C. §
3 1681i(a)(6) relating to the dispute Plaintiff raised in the Dispute Letter
4 regarding the DirecTV account. While NCTUE provided a reinvestigation
5 dated September 28, 2020, in which it acknowledged receipt of the Dispute
6 Letter, NCTUE failed to provide Plaintiff with any response to Plaintiff’s
7 dispute regarding his DirecTV account.
8

9
10 16. As a result of NCTUE’s failure to provide a consumer disclosure, NCTUE
11 negligently failed in its duties as required by and in violation of 15 U.S.C. §
12 1681i(a)(6).
13

14 17. Further, NCTUE willfully failed in its duties as required by and in violation
15 of 15 U.S.C. § 1681i(a) when NCTUE failed to provide written notice to
16 Plaintiff of the results of a reinvestigation not later than 5 business days after
17 the completion of the reinvestigation (assuming an investigation was
18 completed), by mail or, if authorized by the consumer for that purpose, by
19 other means available to the agency. Indeed, NCTUE failed to provide
20 Plaintiff any evidence of any investigation it conducted into the disputes
21 Plaintiff raised regarding his DirecTV account, thereby shirking NCTUE’s
22 duties under the FCRA.
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Cox Misreported Credit Information**RE: Account No. 05055**

18. In the same NCTUE credit report dated July 24, 2020, Cox inaccurately reported Plaintiff's account was "Charged-off" with a "Charge-off" amount of \$327.33, as seen below, despite the fact Plaintiff's Cox account remained open and active and Plaintiff was using the hardware which was the basis for Cox's claim he owed \$327.33.

COX COMMS - LAS VEGAS 6205B PEACHTREE DUNWOODY RD ATLANTA GA 30328							
Account Number 05055*	Service Type Internet	Sub-Service Type	Connect Date 07/02/2019	Account Status Closed Account/Charged-off	Date Reported 07/01/2020		
Current Balance Amount \$0.00	Current Balance Date 07/01/2020	Last Payment Amount \$0.00	Last Payment Date 06/01/2020	Past Due Amount \$0.00	Disconnect Date 10/10/2019	Charge-Off Amount \$327.33	Date of First Delinquency 07/02/2019

Monthly Payment History:

Date	Account Status	Balance Amount	Payment Amount	Charge-Off Amount
Jun 1, 2020	C			\$327.33

19. On or about August 17, 2020, pursuant to 15 U.S.C. § 1681i(a)(2), Plaintiff disputed Cox's reported information regarding its reported obligation by notifying NCTUE, in writing, of the incorrect and inaccurate credit information furnished by Cox.

20. Specifically, Plaintiff sent the Dispute Letter, requesting the above inaccurate and incorrect derogatory information be removed, corrected, or deleted. In pertinent part, the NCTUE Dispute Letter read as follows:

On the next trade line with **Cox Comms**, Account Number 05055, I used Cox Comm services and later left the country. When I left the country, I informed them to turn off services until I returned. Please note on the history, Cox Comms shows a current payment of \$315.00 which is accurate but there is a Charge-off item dated 10/10/2019 for \$327.33, which I do not owe. This money represents the cost of their equipment. Please correct this record. I currently have the equipment in my possession and will retain it until I no longer use Cox Comms services. It bodes poorly on my credit to show a false charge-off in the amount of \$327.33. The equipment is sitting inside my home and should NOT appear as a charge-off.

21. Upon information and belief, upon receiving the NCTUE Dispute Letter, NCTUE timely notified Cox of the dispute based on its mandated statutory duty pursuant to 15 U.S.C. § 1681i.
22. Defendants were each required to conduct an investigation into this specific account on Plaintiff's consumer report pursuant to 15 U.S.C. § 1681i.
23. On or about September 28, 2020, Plaintiff received notification from NCTUE through its "reinvestigation" (NCTUE Report No. 0409000188) that Cox and NCTUE received notice of Plaintiff's dispute pursuant to 15 U.S.C. § 1681i(a)(6), and verified the account as "Updated". While Cox and NCTUE removed the erroneous charge off amount, it continued reporting Plaintiff's account as "charged off" for June and July 2020, as seen below.

COX COMMS - LAS VEGAS 6205B PEACHTREE DUNWOODY RD ATLANTA GA 30328							
Account Number	Service Type	Sub-Service Type	Connect Date	Account Status	Date Reported		
05055*	Internet		07/02/2019	Paid or Closed Account / Zero Balance	09/02/2020		
Current Balance Amount	Current Balance Date	Last Payment Amount	Last Payment Date	Past Due Amount	Disconnect Date	Charge-Off Amount	Date of First Delinquency
\$ 0.00	08/01/2020	\$ 0.00	06/01/2020	\$ 0.00	10/10/2019	\$ 0.00	07/02/2019

Monthly Payment History:

Date	Account Status	Balance Amount	Payment Amount	Charge-Off Amount
Aug 15, 2020	9			
Jul 01, 2020	C			\$ 0.00
Jun 01, 2020	C			\$ 0.00

1 24. A reasonable investigation by these Defendants would have indicated there
2 was no charge off related to Plaintiff's Cox account.

3 25. Cox and NCTUE failed to conduct a reasonable investigation as required by
4 15 U.S.C. §§ 1681s-2(b)(1)(A) (as to Cox) and/or 1681i(a) (as to both Cox
5 and NCTUE), and wrongly verified inaccurate information in connection with
6 Plaintiff's credit reports.
7

8 26. Cox and NCTUE failed to review all relevant information provided by
9 Plaintiff in the dispute to NCTUE, as required by and in violation of 15 U.S.C.
10 §§ 1681s-2(b)(1)(B) and 1681i(a), respectively.
11

12 27. Cox and NCTUE re-reported the inaccurate derogatory information on
13 Plaintiff's report. Specifically, Cox and NCTUE still reported Plaintiff's
14 account as "charged off" when it had never been in such status.
15

16 28. Upon receipt of Plaintiff's dispute, Cox and NCTUE failed to conduct an
17 investigation with respect to the disputed information as required by 15 U.S.C.
18 §§ 1681s-2(b)(1)(B) and/or 1681i(a), respectively.
19

20 29. Due to Cox's and NCTUE's failure to reasonably investigate Plaintiff's
21 dispute, they each further failed to correct and update Plaintiff's information
22 as required by 15 U.S.C. § 1681s-2(b)(1)(E), thereby causing continued
23 reporting of inaccurate information in violation of 15 U.S.C. §§ 1681-
24 s(2)(b)(1)(C) and/or 1681e(b), respectively.
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1 30. Plaintiff's Dispute Letter also included a statement of dispute as that term is
2 meant pursuant to 15 U.S.C. § 1681i(b). Specifically, Plaintiff requested that
3 NCTUE include a statement on Plaintiff's credit report stating that the instant
4 account was disputed in the event NCTUE failed to make the requested
5 corrections identified in the Dispute Letter.
6

7
8 31. Upon information and belief, NCTUE failed in Plaintiff's subsequent
9 consumer reports containing the above disputed information to clearly note
10 that this account was disputed by Plaintiff and provide either Plaintiff's
11 dispute statement or a clear and accurate codification or summary of the
12 dispute in violation of NCTUE's statutory obligations under 15 U.S.C. §
13 1681i(c).
14
15

16 32. Reporting and re-reporting the above-referenced derogatory information
17 also constituted a violation of 15 U.S.C. § 1681g(a) because the lack of
18 clarity in the information reported and re-reported has the tendency to
19 confuse ordinary consumers like Plaintiff.
20
21

22 33. Despite Plaintiff's continued efforts to correct Cox's and NCTUE's
23 erroneous and negative reporting of the Cox account in writing, Cox and
24 NCTUE neglected, refused, or failed to do so.
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1 34. Cox's and NCTUE's continued inaccurate and negative reporting of the Cox
2 debt in light of their knowledge of the actual error was willful. Plaintiff is,
3 accordingly, eligible for statutory damages.
4

5 35. Also as a result of Cox's and NCTUE's continued inaccurate and negative
6 reporting, Plaintiff has suffered actual damages, including without limitation
7 fear of credit denials, out-of-pocket expenses in challenging Defendants'
8 wrongful representations, damage to his creditworthiness, and emotional
9 distress.
10

11 36. By inaccurately reporting account information relating to the Cox debt after
12 notice and confirmation of their errors, Cox and NCTUE failed to take
13 appropriate measures as required under 15 U.S.C. §§ 1681-s(2)(b)(1)(D)
14 and/or (E), 1681i(a), and 1681e(b), respectively.
15

16
17 **FIRST CAUSE OF ACTION**
18 **VIOLATION OF THE FAIR CREDIT REPORTING ACT**
19 **15 U.S.C. § 1681 *ET SEQ.* (FCRA)**

20 37. Plaintiff incorporates by reference all of the above paragraphs of this
21 Complaint as though fully stated herein.
22

23 38. Additionally, Defendant's inaccurate reporting did not comply with industry
24 standard. The Consumer Data Industry Association ("CDIA") provides
25 reporting standards and guidelines to assist furnishers of information and
26 credit reporting agencies with their compliance requirements under the FCRA
27
28

1 and published and implemented the Metro 2 Format reporting standards
2 (“Metro 2 Format”).

3 39. Courts rely on such standards to determine furnisher liability. *See e.g. In re*
4 *Helmes*, 336 B.R. 105, 107 (Bankr. E.D. Va. 2005).

5
6 40. On information and belief, Defendants adopted the Metro 2 Format reporting
7 standards and at all times relevant implemented the Metro 2 Format as an
8 integral aspect of their duties under FCRA, which requires adequate and
9 reasonable policies and procedures be in place to handle investigations of
10 disputed information.
11

12
13 41. Defendants failed to comply with industry standards. Defendants failed to
14 comply with the Metro 2 Format instructions and reported inaccurate
15 information, thus violating their duty to follow reasonable procedures to
16 assure maximum possible accuracy under 15 U.S.C. § 1681e(b) when
17 preparing a consumer report.
18

19
20 42. Not only was Defendants’ reporting inaccurate and a departure from the
21 credit industry’s own reporting standards, Defendants’ reporting was also
22 materially misleading under the CDIA’s standards as well.
23

24 43. To this end, the adverse reporting on Plaintiff’s consumer report departed
25 from the credit industry’s own reporting standards and was not only
26 inaccurate, but also materially misleading under the CDIA’s standards as well.
27
28

1 44. A "materially misleading" statement is more than just inaccuracies in
2 reported information. It also includes omissions that cause reported
3 information to be misleading or that create misperceptions about otherwise
4 factually accurate data. *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147,
5 1163 (9th Cir. 2009).
6

7
8 45. Defendants failed to conduct a reasonable investigation as required by 15
9 U.S.C. §§ 1681s-2(b)(1)(A) and/or 1681i(a), and wrongly verified inaccurate
10 information in connection with Plaintiff's credit reports.
11

12 46. Defendants failed to review all relevant information provided by Plaintiff in
13 the dispute to Defendants, as required by and in violation of 15 U.S.C. §
14 1681i(a).
15

16 47. Defendants re-reported the inaccurate derogatory information on Plaintiff's
17 report. Specifically, Defendants still reported scheduled payment amounts on
18 debts that has been paid in full and/or had been discharged in Bankruptcy.
19

20 48. Upon receipt of Plaintiff's dispute, Defendants failed to conduct an
21 investigation with respect to the disputed information as required by 15 U.S.C.
22 §§ 1681s-2(b)(1)(B) and/or 1681i(a).
23

24 49. Due to Defendants' failure to reasonably investigate Plaintiff's dispute, they
25 each further failed to correct and update Plaintiff's information as required by
26 15 U.S.C. § 1681s-2(b)(1)(E), thereby causing continued reporting of
27
28

1 inaccurate information in violation of 15 U.S.C. §§ 1681-s(2)(b)(1)(C) and/or
2 1681e(b).

3 50. Plaintiff's Dispute Letter also included a statement of dispute as that term is
4 meant pursuant to 15 U.S.C. § 1681i(b). Specifically, Plaintiff requested
5 Equifax/Experian/TransUnion include a statement on Plaintiff's credit report
6 stating the instant account was disputed in the event NCTUE failed to make
7 the requested corrections identified in the Dispute Letter.
8

9
10 51. Upon information and belief, NCTUE failed in Plaintiff's subsequent
11 consumer reports containing the above disputed information to clearly note
12 this account was disputed by Plaintiff and provide either Plaintiff's dispute
13 statement or a clear and accurate codification or summary of the dispute in
14 violation of NCTUE's statutory obligations under 15 U.S.C. § 1681i(c).
15

16
17 52. Reporting and re-reporting the above-referenced derogatory information also
18 constituted a violation of 15 U.S.C. § 1681g(a) because the lack of clarity in
19 the information reported and re-reported has the tendency to confuse ordinary
20 consumers like Plaintiff.
21

22
23 53. Despite Plaintiff's efforts to correct Defendants' erroneous and negative
24 reporting in writing, Defendants neglected, refused, or failed to do so.
25
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1 54. Defendants' continued inaccurate and negative reporting of the Debts in light
2 of their knowledge of the actual error was willful. Plaintiff is, accordingly,
3 eligible for statutory damages.
4

5 55. Also as a result of Defendants' continued inaccurate and negative reporting,
6 Plaintiff has suffered actual damages, including without limitation fear of
7 credit denials, out-of-pocket expenses in challenging Defendants' wrongful
8 representations, damage to his creditworthiness, and emotional distress.
9

10 56. By inaccurately reporting account information relating to the discharged debt
11 after notice and confirmation of their errors, Defendants failed to take the
12 appropriate measures as required under 15 U.S.C. §§ 1681-s(2)(b)(1)(D)
13 and/or (E), 1681i(a) and 1681e(b).
14

15 57. The foregoing acts and omissions constitute numerous and multiple willful,
16 reckless or negligent violations of the FCRA, including but not limited to each
17 and every one of the above-cited provisions of the FCRA, 15 U.S.C. § 1681.
18

19 58. As a result of each and every willful violation of the FCRA, Plaintiff is
20 entitled to actual damages as the Court may allow pursuant to 15 U.S.C. §
21 1681n(a)(1); statutory damages pursuant to 15 U.S.C. § 1681n(a)(1); punitive
22 damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(2); and
23 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1681n(a)(3) from
24 Defendants.
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1 59. As a result of each and every negligent noncompliance of the FCRA, Plaintiff
2 is entitled to actual damages as the Court may allow pursuant to 15 U.S.C. §
3 1681o(a)(1); and reasonable attorney's fees and costs pursuant to 15 U.S.C. §
4 1681o(a)(2) from Defendants.
5

6 **PRAYER FOR RELIEF**

7 Plaintiff respectfully requests the Court grant Plaintiff the following relief
8 against Defendants:
9

10 **FIRST CAUSE OF ACTION**
11 **VIOLATION OF THE FAIR CREDIT REPORTING ACT**
12 **15 U.S.C. § 1681 ET SEQ. (FCRA)**

- 13 • actual damages pursuant to 15 U.S.C. § 1681n(a)(1);
- 14 • statutory damages pursuant to 15 U.S.C. § 1681n(a)(1);
- 15 • punitive damages as the Court may allow pursuant to 15 U.S.C. §
16 1681n(a)(2);
- 17 • costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. §
18 1681n(a)(3), and 15 U.S.C. § 1681(o)(a)(1) against Defendant for each
19 incident of negligent noncompliance of the FCRA; and
20 • any other relief the Court may deem just and proper.
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TRIAL BY JURY

60. Pursuant to the Seventh Amendment to the Constitution of the United States
of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: November 19, 2020

Respectfully submitted,

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